



# State Bar of Michigan

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# RECEIVED

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OFFICE OF  
THE CHIEF JUSTICE

Michigan Supreme Court  
Clerk's Office  
PO Box 30052  
Lansing, MI 48909

May 30, 2003

Re. 2003-14  
Proposed Amendment of Rules 3 and 4 of the  
Rules Concerning the State Bar of Michigan

The State Bar of Michigan appreciates the Supreme Court's consideration of the dues proposal package recommended by the Representative Assembly of the State Bar. We offer the following comments on several provisions of the revised Supreme Court proposal published for comment along with the Representative Assembly proposal in the Supreme Court's April 8<sup>th</sup> order.

## **Rule 3      Membership Classes (Active Status, Inactive Status, Withdrawal, and Reinstatement)**

The State Bar proposal for "resignation" would require former members who chose the resignation option over inactive status to re-qualify for membership as if they had never been admitted as a lawyer, i.e., by passing the Bar Examination and Character and Fitness review. The Supreme Court revised proposal for "withdrawal" would allow former members who re-applied for membership to be re-admitted on the same basis as members who had been inactive for three years or more, without bar examination and character and fitness review.

### "Resignation" versus "Withdrawal"

The State Bar's proposal to add a resignation option within the Supreme Court Rules concerning the State Bar of Michigan would make the Rules consistent with MCR 9.115(M):

**(M) Resignation by Respondent; Admission of Charges.** An attorney's request that his or her name be stricken from the official register of attorneys may not be accepted while a request for investigation or a complaint is pending, except pursuant to an order of revocation.

The use of the word "withdrawal" instead of "resignation" is a semantic, not substantive, difference. Although the use of the word "resignation" has the advantage of consistency with MCR 9.115(M), either word is adequate to describe the choice not to maintain one's law license as a member of the State Bar of Michigan, rather than choosing active or inactive status. What is significant is the consequence for "withdrawal" or "resignation."

### Consequences for Electing Inactive Member versus Non-Member Status

Michigan is one of a minority of states that does not impose a cost for inactive status. The rationale for assessing partial dues for members who elect inactive status is that the inactive member remains a member of the legal profession in the jurisdiction, albeit under a temporary, self-imposed limitation on practice. The inactive member maintains a present and future stake in the well-being of the profession, and retains the ability to reactivate his or

her license with administrative ease for up to three years. Under the revised proposal, a member who chooses to withdraw entirely from membership and pay nothing would face virtually the same consequence that an inactive member who had paid partial dues for three years of inactive status faces: the need to apply to the Board of Law Examiners. There would be no financial incentive to choose inactive status over resignation/withdrawal.

The State Bar believes that there must be a clear distinction between members who are inactive and those who choose resignation/withdrawal, and clear incentives to choose inactive status for members who believe they may ill want to become a member again in the future. The option of withdrawal/resignation should be reserved for those who do not intend to return to membership. For that reason, the State Bar proposal would require full re-certification of the former member, to discourage members from jumping in and out of membership after three year intervals of inactivity without any dues contribution to the maintenance of the profession. An alternative option for reducing the incentive to choose resignation/withdrawal over inactive status would be to require resigned/withdrawn members to pay inactive status dues for each year of non-membership status, from the date of resignation/withdrawal to re-application, as a prerequisite for consideration of the applicant's petition by the Board of Law Examiners.

Note: In addition to the problem of having active members subsidize the administrative costs of maintaining members on inactive status, the status quo concerning active/inactive membership is unsatisfactory for other reasons. Currently, the licenses of members who fail to pay dues but do not affirmatively elect inactive status are suspended. As with members subject to disciplinary suspension, they remain members but their licenses are administratively suspended. They cannot practice law in Michigan, and for purposes of qualifying for practice in other states, they cannot claim to be members in "good standing" of the State Bar of Michigan unless and until they pay a late fee and back dues. (Both the State Bar proposal and the revised proposal add a reinstatement fee in such situations.)

Under the status quo the State Bar has been unable to distinguish between members who are simply delinquent in the payment of dues and intend eventually to return to practice, and those who have chosen to leave the practice of law in this jurisdiction and consequently have no incentive to continue to pay dues. The State Bar's data concerning these "suspended" members are largely outdated. The State Bar proposal concerning active/inactive members, reinstatement, and resignation would clarify membership status options (and consequences) for members, and facilitate better recordkeeping, useful for a number of purposes, including cross-jurisdictional discipline.

## **Rule 4          Membership Dues**

### **Rule 4 (a)**

- The Supreme Court revised proposal deletes the word "active" in the first sentence of Rule 4 (a). The State Bar supports this change as consistent with its proposal.
- Both the State Bar proposal and the Supreme Court revised proposal provide that members who are admitted to the Bar during the last six months of the year pay only one-half of the base membership dues amount. Unlike the State Bar proposal, however, the Supreme Court proposal does not provide for a similar reduction in the Client Protection Fund assessment. The State Bar believes that an equivalent reduction in the Client Protection Fund assessment is desirable for reasons of consistency. Concerning the \$15 Client Protection Fund assessment, the State Bar is actively investigating options to achieve the public protection advantages of the Client Protection Fund program more cost-effectively. Preliminary data substantiate the \$15 assessment amount, but hold promise for enhancing the public protection coverage.
- The Supreme Court revised proposal omits the base membership dues amount from the Rule. The State Bar proposal maintains the base membership dues amount in the Supreme Court Rules. The rationale for maintaining the dues amount in the Rules and for building in an annual inflationary/deflationary adjustment, is a practical one. Setting the dues amount effectively back to "zero" every year would trigger an elaborate and time-consuming annual process, including Representative Assembly review and approval, unnecessarily diverting time and resources from the central work of the Bar and the Court. By contrast, the status quo

facilitates forward planning for the State Bar and its members. An annual inflationary/deflationary adjustment would be even more efficient, and improve upon the status quo in terms of staff resources and forward planning.

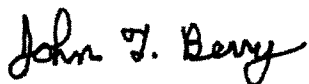
Continuation of the publication of the base dues amount in the Supreme Court Rules Concerning the State Bar of Michigan does not diminish the Supreme Court's ability to change the dues amount at any time, nor would eliminating the publication of the amount enhance the Supreme Court's prerogatives. The State Bar's finances and budgetary processes are subject to ongoing scrutiny by both the Supreme Court and the membership of the State Bar. Detailed information is published in the Bar Journal and on the State Bar website, and State Bar staff is committed to providing complete and timely answers to financial questions. This process and communication is sufficient to ensure effective oversight and accountability.

Rule 4 (b)

- The Supreme Court revised proposal deletes the word "active" throughout Rule 4 (b). The State Bar supports these deletions as consistent with its proposal.
- The State Bar believes that its compromise senior lawyer proposal better reflects the multiple purposes of allowing retired members to continue to have membership status without cost, of encouraging pro bono practice by otherwise retired lawyers, and requiring dues from a greater proportion of older lawyers who continue to maintain full-time practices. The Supreme Court non-exemption alternative does not promote the first two objectives; the years-of-membership alternative does not advance the third objective.

**With this comment letter, the State Bar also respectfully requests the right to appear before the Court on 2003-14 and 2002-38 at the June 19, 2003 administrative public hearing.**

Sincerely,

A handwritten signature in black ink, reading "John T. Berry". The signature is written in a cursive, flowing style.

John T. Berry  
Executive Director